termination is defined not by its physical location but simply by where the call recipient **(through** the selection of NXX's) chooses.

Rating of telephone traffic is based upon location of the central offices in which the traffic originates and terminates. Because of difficulties in tracking all telecommunications traffic, telephone companies use the NXX assigned to a particular central office as the means to identify the points of origination and termination.[47] **Thus** a call from Montpelier **(229)** to Burlington ***(862)*** is known by the network to be toll, whereas one to Waterbury **(244)** is local.

Each NXX is assigned to a rate center (exchange) and a switch.[48] Historically, these have coincided. Under VNXX, the NXX is assigned to a rate center, but also to a switch that is located in a *different* location. For example, Global could seek the assignment of an NXX to Montpelier as a rate center, while having the NXX assigned to a switch in Brattleboro where Global interconnects with Verizon. If the competitor actually has customers in Montpelier, such an arrangement allows the CLEC to use a single switch to route traffic. In the above example, Global would receive the call Verizon delivered at the point of interconnection in Brattleboro and then terminate the call to Montpelier using the switch located in Brattleboro. Under VNXX, however, the CLEC may not deliver the call anywhere except the exchange in which it's switch is located (i.e., Brattleboro). The effect of such a decision is to have the rating of a call originated in Montpelier based upon termination in Montpelier, when the call actually terminates **(as** that term is commonly used in the network) in Brattleboro. Thus, by the simple expedient of acquiring an NXX code, a CLEC using virtual NXX could convert calls from toll to local. From a pricing perspective, the originating LEC loses the toll revenue, and must pay the terminating CLEC reciprocal compensation, even though the VNXX call looks identical to a toll call.

Positions of the Parties

Global requests that the Board permit it to **use** VNXX's. Global argues that the traffic is not toll traffic, stating that the traffic is essentially foreign exchange traffic ("FX") equivalent to

47. **Haynes pf. at** 24.

48. **Haynes pf. at** 22; **Lundquist pf. at** 60.

other local traffic terminated at a foreign exchange number. Global also argues the VNXX imposes no additional costs on Verizon, as Verizon's routing of traffic to Global is the same, irrespective of Global's subsequent handling of the call. In a similar vein, Global **asserts** that VNXX service does not cause Verizon to lose toll revenue, again analogyzing to FX service. Global compares its VNXX service to Verizon's "500-number" service and states that Global should be permitted to **offer** service on a similar basis.

Verizon counters that the Board should not permit VNXX traffic. According to Verizon, VNXX is simply a means to avoid toll charges and circumvent the Board's policy of defining local calling areas. Verizon also requests that the Board not require Verizon to pay reciprocal compensation for these calls.

The Department recommends that the Board not erect any legal barriers to the **use** of VNXX in this docket. Instead, the Department asks that the Board direct that compensation for VNXX traffic "be consistent with the goals of the Board's Order in Docket 5713."[49]

Discussion and **Conclusion**

I recommend that, in this arbitration, the Board adopt a policy that prohibits the **use** of VNXX for purposes of avoiding what would otherwise be toll charges. Specifically, the policy should ensure that calls continue to be rated based upon their actual termination point, rather **than** a location designation that does not match the physical location. Using the above example, a call originating in Montpelier and terminating in Brattleboro should be rated **as** a toll call, even if terminated to a telephone number that is assigned to Montpelier **as the** rate center.[50]

I reach this conclusion largely for the reasons expressed by Verizon. VNXX as now used merely **uses** the designation of the terminating switch as a means to convert calls from toll to local. Like the statewide local calling areas discussed in **Issue 3**, this usage has the effect of

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49. The Department's recommendation is thus internally inconsistent. Adherence to the Docket 5713 goals requires the Board to conclude that VNXX traffic should be rated as toll if it does not physically terminate within the local calling area of the originating party, which has the effect of barring the entire purpose of VNXX.

50. I recognize that there may be technological limitations associated with separating traffic between VNXX calls and those that are actually routed back to CLEC customers in the designated rate center. The parties to the arbitration can resolve these implementation issues during the final negotiations.

undermining or eliminating the toll/local distinction embedded in the current rate structure. As I discuss above, statewide local call areas may ultimately prove beneficial to Vermont ratepayers, although the evidence in the record is insufficient to support such a finding now. However, VNXX achieves the result by having Verizon transport the call in the same manner it would a toll call, without any compensation for that call (except LMS, which is at least partially offset by reciprocal compensation payments to the CLEC).

It is important to recognize that rating calls based upon origination and termination points does not limit competition or provide an unfair advantage to the incumbent telephone carriers. VNXX does not in any way represent an innovation of the sort that competition is intended to encourage, Rather, VNXX is an artificial service that takes advantage of the manner in which NXX codes are assigned as a means to avoid toll charges and is essentially a form of price arbitrage. In effect, a CLEC using VNXX offers the equivalent of incoming 1-800 service, without having to pay any of the costs associated with deploying that service and instead relying upon Verizon to transport the traffic without charge simply because the VNXX says the call is "local."

Global attempts to justify the VNXX arrangements as being similar to FX services. However, this comparison omits substantial differences between the two. In the case of an FX line, a retail customer purchases a link between two central offices. Calls placed to one of the customer's lines are considered to be terminated at one end of the FX line, even though they are transported to the other end in what would normally be a toll call. For example, a customer in Brattleboro with large traffic volumes could purchase an FX line from Brattleboro to Montpelier and obtain a Montpelier phone number. Calls placed to that Montpelier number from another Montpelier number are rated as local, even though the call is transported to Brattleboro (in what would otherwise be a toll call).

Global is correct that FX service allows a call to be treated as local, even though it's ultimate physical termination point may be outside the local calling area. Global's VNXX proposal differs from FX service significantly, however. Retail customers using FX service purchase the FX line, paying costs that cover the cost of that line and the transportation of traffic in bulk between the two end points. In Global's case, neither Global nor its customers taking

advantage of VNXX purchase any facility or actually transport the call between central offices. Instead, they rely upon Verizon to provide the FX service for free (as a result of Verizon's obligation to transport calls to the interconnection point), rather than being compensated by the buyer of the FX line. This is not equivalent to FX service?'

Global also correctly points out that, ***assuming*** Global interconnects at a single point, Verizon's routing of the VNXX call is identical irrespective of whether the call terminates in Brattleboro or is returned to a physical presence in Montpelier. However, Verizon's costs are not the relevant issue. Instead, it is appropriate to focus on the manner in which calls are rated within Vermont, based upon policies established by this Board. In Dockets 5670 and 5713, the Board explicitly defined the calls that would be considered local and ruled that intercarrier compensation should be based upon the boundaries the Board established. VNXX radically alters that determination. In addition, it may not fully compensate Verizon for the costs of transporting what the Board has defined as a toll call. As such, it is unreasonable and should be rejected.

Moreover, Global's focus on Verizon's costs fails to adequately take into account the broader context in which traffic is being exchanged and rated If Verizon must transport traffic large distances without charge while the **CLEC** terminating the call is free to designate that call as local, competitors are encouraged to establish their services in a manner that relies most heavily on Verizon to transport the calls, with no compensation to Verizon for that service (for the reasons I discuss above). This result, which depends upon a form of price arbitrage, sends inappropriate signals to competitors and discourages the deployment or purchase of facilities that may provide more efficient service to customers.[52]

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51. Parties should note that this conclusion docs not bar Global from selling its customers private line services in the same manner as Verizon, using its awn facilities, unbundled elements or resold FX lines. If Global interconnected to Montpelier, it (like Verizon) could sell a customer an FX or similar line between Brattleboro and Montpelier and treat Montpelier as the termination point.

52. In this Proposal for Decision, I recommend that the Board accept a single point of interconnection, to which Verizon must route calls without additional compensation. I recognize that this means of routing will add costs to Verizon and, potentially, to all Verizon customers. It is expected that such excess costs will be short-lived, as CLECs interested in competing actively will eventually find it more efficient to interconnect at additional points of the network and route calls to their switch(es) over their own facilities (leased or constructed). Adoption of Global's position on VNXX and local calling areas would eliminate much of Global's incentive to develop the most efficient

Global's claim that VNXX service does not reduce Verizon's toll revenue is without merit and unsupported by any evidence. To the extent that the service triggers calls that would not otherwise be made, this is correct. But, Global has not presented any evidence showing that the VNXX service has not and could not reduce toll revenues. For example, it could be used to displace incoming 1-800 service or **FX** services, which would reduce revenues. However, Global's argument also fails to consider the broader effects that VNXX has on the manner in which customers choose to purchase service. Customers such as ISPs have purchased Global's service, relying upon VNXX, instead of purchasing services from Verizon or other CLECs. In this regard, the VNXX offering has a direct financial impact on Global's competitors. To the extent that such a result arises from competitive pressures, this outcome is one of the desired effects of competition. **As** described above, VNXX achieves this result not through competition based upon who is the most efficient provider, but by depriving Verizon of toll revenue to which it is entitled under prior Board decisions. I do not find this outcome consistent with the public good.

Global also compares its service offerings to Verizon's 1-500 service that is now marketed to ISPs. **As** described by Global, the 500 number service allows **an ISP** to purchase facilities to each host central office within Vermont. Retail customers call the **ISP** by dialing a 1-500 number, which routs the call to the host office and then to the ISP. **As** a result, the **ISP** could locate in Brattleboro, purchase the 1-500 number service, which includes facilities to Montpelier, and then have calls placed to Montpelier routed to its server in Brattleboro.

The evidence in the record concerning Verizon's 1-500 service does not permit me to determine whether it is similar to VNXX. Global's description demonstrates **at** least one significant difference. In the case of 1-500 service, part of the service purchased by the ISP is the right to transport traffic from each host central office to its server. This service is equivalent to **FX,** whereby the customer essentially buys bulk transport. VNXX, by contrast, does not

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network, because it could rely upon Verizon to provide the services free

generally entail the use of dedicated facilities between central offices paid for by the customer, but instead relies upon Verizon to transport the call.[53]

Parties also suggested that restrictions on the use of VNXX could undermine Vermont ratepayers' access to the internet. At present, many ISPs use Global's telecommunications service and take advantage of VNXX to allow local calling to the internet. My recommendations would lead to a discontinuance of VNXX. I find no basis to conclude, however, that this will have any material effect upon Vermonters' access to the internet. ISPs now using Global can continue to offer service, either using Global or by taking advantage of services provided by other telecommunications carriers, such as Verizon and Adelphia Business Solutions.

I also note that this decision on the use of VNXXs also applies to internet-bound traffic. At present, the FCC has determined that local calls to ISPs are jurisdictionally interstate. However, for purposes of local measured service and dialing, the calls are still treated as local.[54] By comparison, an interexchange call to an ISP is still dialed and rated as a toll call. This distinction should continue to apply.

Issues 5-12

The parties agreed that they would address Issues 5-12 in prefiled testimony and briefs only. The Department does not proffer its position on the remaining issues in this arbitration.

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53. A number of issues concerning the 1-500 service are unclear and could require an adjustment to my recommendation. For example, Global seemed to suggest that all calls placed to the host central office are treated as local, even if they originate outside of the local calling area as defined by the Board (for example, a call from Newport to the St. Johnsbury host). Under past Board rulings and my recommendation, such calls would still be toll calls, There is no evidence on how Verizon actually rates these calls.

Global also failed to present any evidence on whether the services that the ISP purchases from Verizon cover Verizon's costs. I assume they do, but to the extent they failed to cover the total service long-run incremental cost of providing the service, and are thus subsidized by other services, it may be appropriate to allow competitors to seek subsidization as well through VNXX.

Global also suggests that Verizon has restrictions on the sale and resale of the 1-500 service so that only retail customers served by Verizon may place calls to the 1-500 number. If this is correct, the service may be unduly discriminatory (although it is provided through FCC tariffs and thus outside of the Board's jurisdiction). This limitation also may present an unreasonable restriction on resale (which is within the Board's authority to investigate). The present evidence is insufficient to allow me to draw any conclusions.

54. As interstate calls, one would normally expect them to be dialed with a 1+XXX prefix

Issue **5:** IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTJATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED?

Positions of the Parties

Global is requesting a policy determination requiring that the agreement's change of law language should expressly address possible revisions to the FCC's ISP ***Remand Order.***

Verizon acknowledges that Global has a right to renegotiate reciprocal compensation obligations in the event the ISP Remand Order is modified or overturned; but Verizon believes that the change of law provisions it proposes are adequate to address such revisions.

Discussion and Conclusion

Section 4.6 of the General Terms and Conditions allows for renegotiation in good faith where "any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law,[55] materially affects any material provision of this Agreement. . . ." I agree with Verizon's interpretation that this language is sufficient to address any future reversal or revision to the ***ISP Remand Order.*** In particular, I find that revision or reversal of that Order would materially affect the interconnection agreement, including the reciprocal compensation provisions. However, in light of the significance and uncertain fixture of the ***ISP Remand Order,*** and the centrality of ISP-bound traffic to Global's current operations, Global's request for certainty on this matter is understandable. I also find no basis for excluding specificity in the interconnection agreement. Therefore, I recommend that the Board allow the explicit reference to the ISP ***Remand Order*** to be included in the change of law provisions of the interconnection agreement as Global requests.

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55. Defined as: "All effective laws, government regulations and governmental orders, applicable to each Party's performance of its obligations under this Agreement." Proposed Agreement, Glossary § 2.8.

Issue *6:* WHETHER TWO-WAY TRUNKING **IS** AVAILABLE TO GLOBAL AT GLOBAL'S REQUEST.

Positions of the **Parties**

While Global states that Verizon does not oppose offering two-way trunks to Global, it contends that Verizon's contract language imposes onerous restrictions upon Global. Additionally, Global believes that Verizon's requirements make Global responsible for forecasting both carrier's traffic. Global proposes several modifications which it claims "in totality provide for a more equitable offering of two-way trunking than those proposed **by** Verizon."

Verizon agrees that Global has the option to obtain one-way or two-way trunks for interconnection. However, Verizon seeks to establish operational responsibilities and engineering parameters, which the parties will mutually agree upon. Verizon claims that it currently employs the same arrangement regarding two-way trunking with several other CLECs in Vermont. Moreover, Verizon maintains that because two-way trunks cany both Verizon's and Global's traffic on the same **trunk** group, this affects the operational performance of each party's network Verizon witness D'Amico points out that Global's choice to use two-way ***trunks*** necessarily affects Verizon's network. Where two-way trunking **is** employed, "[b]ecause two carriers are sending traffic over the same trunk from the two ends, the actions of one affect the other. . . ."[56] Finally, Verizon considers Global's proposed modifications "nonsensical."

Discussion and Conclusion

The parties agree that Global *can* **use** two-way trunks for interconnection. **I** find Verizon's proposed contract language is reasonable to assure the operational, engineering, and design integrity of both parties' networks, and nondiscriminatory in that Verizon's terms are consistent with those offered to other CLECs in Vermont. Accordingly, **I** recommend the Board should **rule** in favor of Verizon's proposed contract language on this issue.

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56. D'Amico pf. at 28-29.

There is one exception to this decision. With regard to forecasting the traffic terminating on each other's networks, I agree with Global's assertion that each carrier should forecast the traffic that it believes will terminate on the other carrier's network. Verizon's proposal is indeed inequitable in not requiring reciprocal exchange of traffic forecasts, and the interconnection agreement language should require each party to provide periodic forecasts of the traffic it expects to terminate on the other party's network.

Issue 7: IS IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT?

Positions of the Parties

Global argues that the interconnection agreement "should be the sole determinant of the rights and obligations of the parties to the greatest extent possible."[57] Global believes that Verizon would be able to change the terms of the interconnection agreement without Global's assent, by making changes to tariffs and other documents incorporated by reference into the interconnection agreement, and in some cases by changing documents not subject to Board review or approval. Global does consent to referencing Verizon's tariffs as a source of prices.[58]

Verizon states that while the parties would rely on its tariff for applicable rates or prices, the interconnection agreement's terms and conditions would supercede those contained in the tariff. Verizon's proposed language sets out an order of precedence by which, Verizon claims, tariff terms and conditions would only supplement, but will not alter, the interconnection agreement's terms and conditions.[59] Verizon believes Global's proposal would circumvent the official tariff process by "freezing," thereby preventing any changes to, current tariff prices.

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57. **Global Brief at 66.**

58. **Global's petition at 27; undisputed § 1.3 of the Interconnection Agreement's Pricing Attachment.**

59. **Verizon General Terms and Conditions § 1.2.**

Discussion and Conclusion

Global has essentially two choices on this issue. It may incorporate by reference; but, if the referenced tariff is changed, these changes will flow through to the interconnection agreement. Or, the parties could write comprehensive, specific prices and terms into the interconnection agreement.

I recommend the Board allow Verizon to reference its tariffs to determine rates and prices, to the extent they supplement, but do not supercede or alter, the terms, conditions, rates or prices set out in the interconnection agreement. To the extent that the interconnection agreement relies on rates in the tariffs that are incorporated by reference, these rates should change as the tariff changes.

I condition this recommendation in two respects. First, it would be inappropriate, as Global points out, for Verizon to incorporate by reference any document *other* than its Board-approved tariffs in the interconnection agreement.[60]

Second, the contract language should be crafted to encompass procedures in the event rates in an incorporated tariff change. One option already available to Global in the event of a disputed change to Verizon's tariff is to participate in the Board's review and approval process on the matter. Global opines, however, that "[g]iving Global a right to participate in a regulatory review of Verizon's tariff filing can hardly be equated with a right to veto."[61] I agree with this characterization. It may indeed be burdensome to expect Global to participate fully in all Verizon's tariff modification proceedings. Accordingly, I recommend that the Board direct the parties to establish and implement a process by which Verizon will provide adequate notice to Global of any tariff changes that would affect the interconnection agreement. But while the notice obligation is placed on Verizon, Global shall assume the burden of establishing materiality and showing cause to the Board that the rate change should not be approved.

60. For example, Verizon's "CLEC Handbook" should not be incorporated by reference

61. Rooney pf. at 4.

Alternately, if Global wants the certainty of fixed prices over the term of the agreement, all such prices need to be included in the pricing attachment to the interconnection agreement, rather than referenced in tariffs.

Issue 8: SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GLOBAL TO OBTAIN EXCESS LIABILITY INSURANCE COVERAGE OF $10,000,000 AND REQUIRE GLOBAL TO ADOPT SPECIFIED POLICY FORMS?

Positions of the Parties

Verizon seeks to require insurance limits on Global of at least $2,000,000 for Commercial General Liability Insurance, at least $2,000,000 for Worker's Compensation Insurance, at least $2,000,000 for Commercial Motor Vehicle Liability Insurance, and at least $10,000,000 for Excess Liability Insurance. Verizon's insurance requirements also include provisions that Global obtain all risk property insurance (full replacement cost) for Global's property located on Verizon premises, disclose deductibles, name Verizon as an additional insured, provide periodic proof of insurance, and ensure contractors with access to Verizon premises procure insurance. Verizon argues that its exposure is much greater than Global's, given the relative size of their respective networks, and this asymmetrical risk is reflected in its requirements.

Global responds that Verizon's requirements are burdensome, discriminatory, and represent a bamer to competitive entry. Global proposes smaller limits to its coverage, which it feels are adequate. Global contends that Verizon's ability to "self-insure," while imposing specific and restrictive requirements on Global, unfairly advantages Verizon.

Discussion and Conclusion

Both parties claim that arbitration awards in other states support their positions on insurance limits. Global relies on PacBell's lower requirements on Global that were

highlighted in the California arbitration.[62] But, I find this a tenuous reliance, inasmuch as the California arbitration panel actually found Verizon's $10 million excess liability limit appropriate.[63] The New York Commission similarly found that Verizon's requirements are reasonable.[64]

I do not find that Global has made a sufficient showing that Verizon's proposed requirements are unduly burdensome. Neither has Global established that insurance costs or requirements vary from state to state, or whether regional or national coverage might apply. The fact that Verizon requires similar limits on other carriers in Vermont substantiates Verizon's claims. And, despite Global's relatively slight current presence in Vermont, it may outgrow its proposed indemnification. Also, the Act's opt-in provisions,[65] which make the same terms and conditions available to any other requesting CLEC, require that a reasonable level be established here.

I find most of Verizon's remaining insurance requirements are valid. I recommend that the Board should direct Global to: (1) name Verizon as "additional insured;" (2) provide proof of insurance and report changes periodically; (3) maintain property coverage for its real and personal property located on Verizon's premises; and (4) ensure that Global's contractors who access Verizon facilities are insured. Global need not, however, disclose its deductibles or self-insured retentions (except as required as proof of insurance), because Verizon has not provided any justification for its requirements in this area.

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62. *In the Matter of Global NAPs, Inc. Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company/Verizon California, Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunieotions Act of 1996,* at 97.

63. *Id.*

64. *New York Verizon/GNAPs Arbitration Order* at 18.

65. 47 U.S.C. § 252(i)

Issue 9: SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS VERIZON TO AUDIT GLOBAL'S "BOOKS, RECORDS, DOCUMENTS, FACILITIES AND SYSTEMS?"

Positions of the Parties

Verizon proposes that both parties have the right to audit the other party's books, records, facilities, and systems "for the purpose of evaluating the accuracy of the audited party's bills." Such audits would be the right of both parties, and would be performed by a third party of independent certified public accountants, paid by the auditing party.

Global asserts that Verizon's proposal intrudes into competitively sensitive information, seeks information that is already available, and seeks data beyond that necessary to verify the accuracy of bills.

Discussion and Conclusion

I recommend that the Board fmd Verizon's financial audit provisions reasonable, but only within a limited scope and with certain protections included. The auditing party must explicitly direct the auditor to limit the scope of any audit to only information necessary to verify the accuracy of the audited party's bills. Each party's rights are respected by Verizon's proposed provisions which allow that the audited party maintains the right to accept or, with demonstrated cause, reject the chosen auditor. Further, if the audited party believes it is providing proprietary or competitively sensitive information to the auditor, it can do so under a protective agreement or order.

Global is silent on the issue of allowing facility and system audits, as they relate to Verizon's Operations Support Systems ("OSS"). It is reasonable for Verizon to obtain information from the system's users to ensure the integrity of its OSS, especially because the system is shared and relied upon by "hundreds of CLECs, CMRS providers, and IXCs. . . ."[66] Therefore, Verizon's proposal regarding facility and system audits is also adopted.

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66. Verizon Brief at 50.

Issue 10: *SHOULD* VERIZON BE PERMITTED TO COLLOCATE AT GNAPS' FACILITIES IN ORDER TO INTERCONNECT WITH GNAPS?

Positions **of** the Parties

Verizon seeks the right to collocate at Global's facilities. While Verizon acknowledges that § 251(c)(6) applies to ILECs, and not CLECs, it contends that such a right ensures fair terms for interconnection between the parties. Verizon argues that Global's contract language allows Global to dictate the terms of interconnection. **Further,** Verizon asks that if Global prohibits it from collocating at Global's facilities, Glohal should not be allowed to charge Verizon distance-sensitive transport rates to get Verizon's traffic to those facilities.

Global maintains that there is no legal requirement for it to provide collocation, but that "it has long been company policy to do so for the convenience and benefit of its customers."[67] Additionally, Global states that it has never rejected, or even received, a request from Verizon to collocate.

Discussion **and** Conclusion

Verizon concedes that Section 251(c)(6) of the Act applies to ILECs, and not to CLECs. However, **the** Act does not prohibit the Board from allowing an ILEC to collocate at a CLEC's facility. I find that Global's proposed contract language is indeed restrictive, allowing interconnection "subject to GNAPs' sole discretion and only to the extent required by Applicable law. . . ."[68] And, although Verizon's fairness argument is unsupported by rule or by law, the Board should find that the public policy benefits of providing all carriers with choices by which they can provide the most cost-effective and efficient facilities and services is paramount. Therefore, I recommend that the Board

67. **Global Brief at 75.**

68. **Global's Interconnection Attachment § 2.1.5.1**

allow Verizon to collocate at Global's facilities, provided there is space and power available.

Parenthetically, Global does not directly address Verizon's allegation that Global would charge distance-sensitive rates to transport Verizon's traffic to its facilities. Nevertheless, for the reasons given in **Issue 2,** if Global were not to allow Verizon to collocate at Global's premises, it would not be allowed to charge Verizon distance-sensitive rates for transport.

Issue **11:** HOW SHOULD THE PARTIES' AGREEMENT RECOGNIZE APPLICABLE LAW?

Positions **of** the Parties

Verizon asserts that Global's proposed edits to the General Terms and Conditions 5 4.7 are intended to delay implementation of any unstayed decision, order, determination, or action. Verizon proposes that the parties must abide by a change in law when **it** becomes effective, and not delay implementation pending appeal.

Global does not explain or defend its proposed language beyond what *can* be inferred from **the** language itself. Global apparently seeks to narrow the bounds within which any new enactment or change of law would allow Verizon to discontinue service to Global, by requiring that the new or changed law be "final and non-appealable." Global also seeks to add language to Section 4.7 of the interconnection agreement's General Terms and Conditions that provides Verizon may only discontinue service to Global "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier."

Discussion and Conclusion

If Global's argument prevailed on this issue, any or all orders, decisions, determinations, or actions of the Board or any other court or regulatory body would be rendered effectively meaningless, until all appeals were exhausted. Global should not

have the ability to avoid or delay implementation of a Board order it disagrees with, simply by appealing it. I recommend that the Board reject Global's "final and non-appealable" condition. Obviously, if a decision, rule, or order is stayed, such determinations would not become effective until the stay is lifted or the appeal resolved.

I find Global's proposed language regarding discontinuance is superfluous, and unsupported by any argument presented in this Docket.

Issue 12: SHOULD GNAPS ONLY BE PERMITTED TO ACCESS UNEs THAT HAVE BEEN ORDERED UNBUNDLED AND ONLY ALLOWED ACCESS TO VERIZON'S EXISTING **NETWORK?**

Positions of the Parties

The parties' dispute on **Issue** 12 relates to the effect any changes or improvements to Verizon's network would have on the parties' obligations under the interconnection agreement. Also, Verizon seeks to provide only UNEs that it is required to by applicable law.

Global does not directly address Verizon's concerns on this issue.

Discussion and Conclusion

The parties have not clearly defined their dispute on this issue, though Verizon makes a persuasive conceptual argument that it should not be constrained in its decisions with respect to maintaining and upgrading its network. I recommend that the Board accept Verizon's position on this issue. I would add that the parties should understand the potential impacts their decisions about network upgrades and design changes may have on the other party's network. Section 251(c)(5) of the Act imposes the duty "to provide reasonable public notice of . . . any. . . changes that would affect the interoperability of [a local exchange carrier's] facilities and networks." **If, after** discussing the proposed upgrades or modifications, either party finds the changes and impacts unreasonable, such a dispute can be brought before the Board.

Regarding the unbundling and provision of UNEs, Verizon is required to unbundle all named and unnamed network elements that meet the criteria set out in state and federal law,[69] not just those elements that have been declared UNEs because they pass the necessary and impair test.[70]

V. CONCLUSION

For the foregoing reasons, I recommend that the Board adopt the arbitration awards set out in Part N of this Proposal for Decision.

The foregoing is hereby reported to the Public Service Board, pursuant to 30 V.S.A. § 8. In accordance with 3 V.S.A. § 811, this Proposal for Decision has been served on all parties to this proceeding

Dated at Montpelier, Vermont, this 10th day of December ,2002.

s/ John Randall Pratt
John Randall Pratt
Hearing Officer

69. *See, inter olio,* 47 U.S.C. § 251(c)(3); and Docket 5713, Order of 5/29/96 at 17-25.

70. See *Iowa Utilities Board v. Federal Communications Commission,* 219 F. 3d 744,751 (8th Cir. 2000)

VI. BOARD DISCUSSION

On December 3, 2002, Global NAPs, Verizon, and the Department filed comments on the Hearing Officer's Proposal for Decision. The Board heard oral argument on December 11,2002. Of the twelve disputed issues in this arbitration, one or more parties contested the Hearing Officer's proposed decisions, at least in part, on a majority of the issues. Based on our review of the record, the Proposal for Decision. written comments filed in response to the Proposal for Decision, and having heard oral argument on the issues, we address each of the disputed issues, in turn, below. First, we address a broader issue of the Board's jurisdiction over certain matters that surfaced, but only incidentally, in this arbitration.

Regulation of ISP-bound Traffic

Global requests that the Board declare that its rulings have no effect upon ISP-Bound traffic because the Board lacks jurisdiction over such traffic. In particular, Global asks that the Board state that Global may continue to use VNXX for ISP-Bound traffic. In so doing, Global relies largely upon the FCC's determination in the *ISP Remand Order* that calls to ISPs are interstate, subject to the exclusive jurisdiction of the FCC. However, that order also declared that wholesale arrangements for ISP-bound traffic are subject to reciprocal compensation rules, that the traffic is interstate and subject to FCC jurisdiction, and that under certain circumstances, limits of compensation would apply.

We note first that Global is relying on a rationale in that order by the FCC that has been tested in court and found wanting. While the Court of Appeals left the FCC's rule in effect, it soundly rejected the FCC's rationale. Therefore, the only way for the FCC order to affect this proceeding is to conclude that existing state policy violates federal rules.

Second, we note that Global's argument is internally inconsistent. Global seeks to use VNXXs to terminate calls to ISPs as local calls rather than toll calls. In so doing, Global relies upon the Board's determination of local calling areas as defined in Docket 5670, and the dialing

protocol adopted in Docket **5634.** At the same time, Global asserts that because ISP-Bound Traffic is interstate, **the** Board has no jurisdiction to declare the **use** of VNXX is impermissible. If the latter argument is correct, then the Board would have no authority to define calling areas for ISP-Bound traffic (because the calls to VNXX's are interstate) or to treat the calls as local for rating purposes. Furthermore, under Docket **5634,** it would be impermissible to dial the calls as local using seven digits.[71] In other words, if we interpreted our jurisdiction as narrowly **as** Global asserts here, we would have no jurisdiction to order Verizon to grant the relief that Global seeks.

We recognize that the FCC has asserted that calls to ISPs constitute interstate information services that are subject to the FCC's jurisdiction. **The** FCC also asserted exclusive jurisdiction over intercarrier compensation for ISP-Bound traffic.[72] However, Global has not explained how that determination eliminates the Board's authority except with respect **to** calls that would otherwise be subject to reciprocal compensation. For example, the Board retains authority to arbitrate Interconnection Agreements, including those that encompass ISP-Bound traffic, although the ***ISP Remand Order*** would bar state action on reciprocal compensation.

Moreover, the ***ISP Remand Order*** does not clearly ovemde all state jurisdiction over calls to ISPs. For example, even under the terms of the FCC's own order, Verizon and other LECs may continue to collect Local Measured Service charges from retail customers, under intrastate tariff for calls to **ISPs. The** FCC's Order also requires that ILECs serving ISPs sell services under their ***intrastate*** business tariffs, which **are** subject to exclusive state jurisdiction (even though **the** calls are now "interstate").[73] Also, the FCC acknowledged that if it had not limited reciprocal compensation for ISP-Bound traffic, ILECs that paid excessive reciprocal compensation for ISP-Bound calls could seek to recover additional revenues from their local customers, including those

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71. We recognize that these inconsistencies stem, at least in part, from the FCC's determinations. The FCC has asserted broad jurisdiction, but continues to leave in place many areas of state jurisdiction. Similarly, the FCC appears to treat most ISP-Bound traffic as both local (e.g., for purposes of rating and dialing) and interstate. Until such inconsistency is clearly resolved, we cannot find that we lack jurisdiction.

72. It is not clear from the language of that ruling whether it applies to ISP-bound traffic that would not normally be subject to reciprocal compensation.

73. ***ISP Remand Order,*** **fn. 151.**

who call ISPs, to compensate them.[74] If we read the ***ISP Remand Order*** as Global suggests, recovering such costs in intrastate rates would clearly be impermissible as these losses relate to interstate costs.

In addition, nothing in the ***ISP Remand Order*** suggests that the Board's authority to define local calling areas has been altered. Global points to no language, but instead relies upon a broad assertion of preemption. We see no basis for Global's assertion. Accordingly, we reject Global's argument. This Order applies to ISP-Bound traffic and bars the use of VNXX's for the purpose of completing calls to ISPs.

Issue **1:** Single Point of Interconnection ("POI")

No party contested the Hearing Officer's recommendation that Global NAPs may establish a single point of interconnection in Vermont. We affirm that decision.

Issue **2:** Transport to the POI

The Hearing Officer recommends that each party should be required to transport traffic **on** its side of the POI, at its own expense. However, the Hearing Officer further explains that the only traffic this applies to is intra-exchange, "local" traffic, for which reciprocal compensation is the relevant intercamer compensation scheme. We accept the Hearing Officer's analysis on this point.

Global cites recent arbitration decisions in several states, including the **FCC's** Virginia Arbitration Order, to support its claim that the "no charge" regime should apply to all traffic a carrier delivers to a POI, regardless ofwhether or not such a call would otherwise be, in Vermont, a toll call. We reject Global's assertion. At best, the arbitration decisions Global NAPs relies on are silent on whether they would apply to any traffic ***other*** than reciprocal compensation traffic. Some states' decisions, the Virginia Arbitration Order,[75] and the **FCC's**

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14. *ISP Remand Order*, ¶87.

75. *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., ond AT&T Communicalions of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of rke Virginia State Corporation Commission Regarding Interconnection Disputes wirh Verizon Virginia Inc., CC* **Docket Nos.** 00-218, 00-249, **00-251, DA** 02-173 **1, Memorandum Opinion and Order (rel. July 17,** 2002) (*"Virginia*

Rule 703(b),[76] affirmatively and exclusively govern reciprocal compensation, local traffic. We are not persuaded by Global's argument that traffic must be delivered to an IXC to be considered intrastate toll traffic. First, such reasoning is counter to the reality of the way most toll traffic is delivered in Vermont (as Verizon does not "hand-off" it's toll traffic to an IXC). Second, as is addressed in Issue 3, intrastate toll traffic is based on determinations of this Board. Consequently, we accept the Hearing Officer's recommendation regarding toll traffic, because the FCC makes clear that access charges still apply to toll traffic.

We want to make clear that our Order on this issue is not intended to require any additional charges. Simply put, for the types of traffic at issue here, intercarrier compensation is as follows:

(1) Local traffic – no charge;
(2) Information services (that terminate locally) – treated the same as local (at least for now); and
(3) Interexchange (toll) traffic – access charges apply.

Alternatively, Verizon asks that the Board adopt its Virtual Geographically Relevant Interconnection Point ("VGRIPs") proposal, which it claims is consistent with the Hearing Officer's finding that "VGRIPs provide an equitable sharing of the costs of transport."[77] Verizon's comments selectively omit the context of this statement, which frames the Hearing Officer's unwillingness to recommend VGRIPs in this arbitration. He gives support to the VGRIPs proposal only conceptually, but does *not* recommend its approval, stating: "At the present time, however, the VGRIPs model is inconsistent with current intercarrier compensation rules, could alter the toll/local distinction in Vermont; and would require a new and untested costing and billing system to be developed and implemented." (Footnote omitted). We find that

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Arbitration Order") at ¶ 52.

76. 47 CFR § 51.703(b). See *also*, *In* the Matter *of Developing* a Unified *InterCarrier* Compensation Regime, 16 F.C.C. Rcd 9610 (2001)("Intercarrier Compensation NPRM") ¶ 12 ("Our current reciprocal compensation rules preclude an ILEC from charging carriers for *local traffic* that originates on the ILEC's network.") (Emphasis added).

77. Proposal for Decision at 10.

this arbitration is not the forum in which to approve such a comprehensive, untested compensation framework, with potentially significant impact on ratepayers in Vermont.

We affirm the Hearing Officer's decision that each party is required to transport traffic on its side of the POI, at its own expense.

Issue 3: Local Calling Areas

Global asks the Board to reject the Hearing Officer's recommendation that the Board continue to allow CLECs to define their own local calling areas for retail purposes, but continue to base intercarrier compensation upon the Docket 5670 local calling areas. Global states that this recommendation effectively prevents Global from offering larger local calling areas because such offerings are "predicated on the economics at the intercarrier level." Global requests that this Board "promote competition on the basis of local calling areas" by adopting Global's recommendations.

We are not persuaded by Global's arguments and hereby adopt the Hearing Officer's recommendations. The current definition of toll calling areas comes from Docket 5670. As the Hearing Officer stated, a change to the intercarrier compensation rules that apply to toll calls, as suggested by Global, would have potentially significant ramifications. It would, as Global argues, provide a competitive alternative to Verizon's local calling areas. But, it is also likely to force Verizon to respond by seeking to offer the same local calling areas; otherwise, Verizon might find itself at a significant competitive disadvantage. Verizon would also be expected to request that the Board increase other rates to compensate Verizon for the lost toll revenue.[78] Although there is no evidence in the record concerning the potential effects of such a proposed change in rates, based upon our experience, we recognize that the rate shifts (if permitted) could be substantial.[79]

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78. For example, when the Board approved larger local calling areas in Docket 5670, the Board also permitted Verizon and the independent telephone companies to increase their local rates to compensate them for the expected lost toll revenue.

79. As the Hearing Officer pointed out, Global's proposal would *also* affect traffic to and from the independent telephone companies for which toll and access revenue represent a more significant portion of the total company revenues. Customers of these companies may face even greater rate increases than would customers of Verizon.

Permitting Global to define its own local calling areas for purposes of intercarrier compensation thus raises a host of significant policy issues, many of which are beyond the purview of a two-party arbitration. Should Verizon be permitted to match Global's local calling areas? Should Verizon be permitted to increase basic rates to compensate for the lost toll revenue? Is it reasonable to increase rates for low volume customers who do not benefit from the elimination of toll? How should the Board address the rate impacts upon the independent telephone companies? The record is silent on all of these matters, as well as numerous other, related, issues. Moreover, it is necessary to recognize that any decision concerning intercanier compensation for Global would also likely apply to other CLECs, which have the option under Section 252(i) of the Act to opt-in to Global's Interconnection Agreement. Thus, our decision on intercarrier compensation effectively applies to all CLECs.

We find that it would be unreasonable for us to permit CLECs to redefine the intercarrier compensation arrangements until we have a better understanding of the broader implications of such a policy change, including the answers to the above questions. Thus, we adopt the Hearing Officer's recommendations. We understand Global's assertions that our determination may dissuade Global from offering larger calling areas. That is a choice Global must make. Although the Board would welcome a decision by Global to offer larger calling areas, we are at the present time (and in the context of a two-party arbitration), unwilling to achieve that result by eliminating the existing intercarrier compensation mechanisms. Accordingly, we accept the Hearing Officer's recommendation that Global may offer any retail calling area it chooses, wholesale intercarrier compensation shall continue to be based on the local calling areas established in Docket 5670.

Issue 4: Virtual NXX

Global also requests that we permit Global to assign its customers NXX codes that are homed to a central office switch outside of the local calling area in which the customer resides, while still treating these calls as local calls ("VNXX"). In so doing, Global asks that we reject the Hearing Officer's recommendation that would prohibit the use of VNXX within Vermont, but

instead require that calls be rated for both retail and wholesale purposes based upon their physical origination and termination points.

We do not accept Global's request that we reverse the Hearing Officer. The Proposal **for** Decision explains the nature of VNXX traffic in detail. We concur with that analysis; VNXX traffic simply represents a means by which competitors seek to **use** NXX number assignments to convert what would otherwise be a toll call into a local call. Physically, the call is indistinguishable from other calls that the Board has classified as toll. The only difference is the CLEC's designation of a rate center (within the caller's local calling area) that has little or no relationship to the physical destination. We find that this artificial designation of the termination point distorts the existing toll and local distinctions. Accordingly, we adopt the Hearing Officer's recommendations, subject to the clarifications set out below.

Global raises several specific concerns. Global asserts that VNXX traffic is reciprocal compensation traffic (i.e., local traffic), which, according to Global, means that Verizon may not charge transport **or** access charges. This argument, however, is circular; Global's assertion that it is local and that it terminates within the caller's local calling area is based solely on Global's statement that the traffic is local. The claim fails to consider that it is the Board, not Global, that determines the distinction between interexchange traffic and local traffic within Vermont. As the Hearing Officer explained, the FCC has made clear that the Board retains that authority. In this Order, we make clear that the determination of whether traffic is local **or** toll is based upon the physical termination points, not the rate center assigned to a VNXX number.

As the Proposal for Decision makes clear, there **is** an exception to the use of the physical termination point. Verizon and other telecommunications carriers have traditionally allowed retail customers to purchase Foreign Exchange ("FX") services between two physical locations. For example, a retail customer could purchase an FX line from Burlington to Montpelier. Callers in Montpelier could then place a locally rated call to the Montpelier FX customer's Montpelier number, rather than having to place a toll call to the customer's actual location in Burlington. In this example, the call would be transported over the FX line to Burlington. The local exchange carrier is compensated for the **loss** of (the otherwise applicable) toll revenue through the **retail** customer's purchase of the FX facilities (effectively buying bulk toll service). FX service has

limits, however. Customers seeking to purchase it must buy separate FX lines between each pair of locations between which they desire to transport traffic without incurring toll charges.

Under the ruling we make today, customers may continue to purchase FX services from Verizon and other local exchange companies and calls to the foreign exchange will continue to be treated as local, from the calling party's perspective.[80] Absent the purchase of such a service by the customer, calls must be rated based upon physical origination and destination.

We note that the Department expresses concern that the Hearing Officer's recommendation may impair Verizon's FX service and similar offerings. We find that concern misplaced. As we make clear, LECs may deploy FX service (and similar services) that **permit** customers to purchase what is essentially a private line between two central offices so that calls to the remote location are treated as local calls. Nothing in the Proposal for Decision or this Order limits the use **of** FX or similar services.

Global also argues that the Hearing Officer places undue emphasis on potential competitive losses to Verizon arising from VNXX service. According to Global, there is no evidence that Verizon has lost toll revenue due to VNXX service. Moreover, Global asserts that the Board should be concerned about competition, not losses due to competition.

In large part, we agree with Global that losses Verizon suffers due to the advent **of** competition should not dictate policy. In fact, **as** competition **takes** hold, we expect Verizon's market share to reduce, although some revenue reductions may be offset by increased revenues from the sale of wholesale services. VNXX, however, is not merely a competitive alternative to the incumbent's services. Rather, it represents an attempt **to** artificially designate certain calls **as** local, despite their actual physical routing, and thereby avoid the intercarrier compensation policies this Board has established to ensure fair competition among all carriers.

Global also is correct that the record does not show that Verizon **has** lost toll revenue due to VNXX. However, as the Proposal for Decision states, VNXX has the potential to cause such

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80. **Our ruling would also permit LECs to sell retail customers services that are substantially similar to** FX **services, such as Verizon's 500 number service, which is essentially a one-way** FX **line from a host office to an ISP's location,** For **example, a call to a 500 number hub in Montpelier is considered to terminate there (and would be rated the same as any other call to Montpelier from the originating location), even though the ISP customer has purchased the 500 number service to actually transport that call to its location in Burlington.**

losses through its use of the VNXX codes to eliminate the toll/local distinction, particularly as other CLECs can opt-in to this Interconnection Agreement and offer equivalent services. We decline to adopt a policy with such potential implications,

The Department and Verizon both suggest that it is unnecessary to ban the use of VNXX service. Instead, the Department suggests that the Board should permit carriers to continue to use VNXXs, so long as intercarrier-compensation is based upon the actual origination and termination points.

We recognize that an outright ban on the use of VNXXs may be unnecessary. However, to date. no party has suggested a workable alternative that meets these criteria. To be specific, calls must be rated for both wholesale and retail purposes based upon their physical origination and termination points (absent the use of FX or similar service). And to the extent that the call incurs toll charges, dialing must be consistent with our Order in Docket 5634 (i.e., calls that incur toll charges must be dialed as eleven digits, with the telephone number preceded by 1-802), so that customers are aware they are incurring toll charges.[81]

The Department suggested that we direct that intercamer compensation be based upon the origination and termination points while the calls continue to be rated as local for retail purposes. We conclude this proposal is clearly unworkable. While there are other considerations, it is important to understand that the DPS proposal would actually result in less, not more compensation to Verizon and other ILECs.[82] Consider a VNXX call originated with a Verizon customer and terminated with a Global customer located outside of the calling customer's local calling area. If the call is rated as local, then Verizon assesses LMS charges to the retail customer. But since the call is toll for purposes of intercarrier compensation, Verizon

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81. We were struck by Verizon's comment at oral argument that "we did not ask that the Hearing Examiner proscribe the use of virtual NXX, but we did ask that we be compensated." (Tr. 12/11/02 at 47). Does Verizon disagree that the existing compensation regime (access) which we affirm here almost necessarily leads to the discontinuance of VNXX? If Verizon envisions a new intercarrier compensation scheme for VNXX, it should make that clear in Docket 6209.

82. We are sensitive to the Department's concerns that our ruling here may impact some of Global's customers. However, neither Global nor the Department has given any estimate of the likelihood or magnitude of such an effect, if any. for the record in this proceeding.

would then need to compensate Global at a higher per-minute access rate to terminate the call.[83] As a result, the Department's proposal would actually exacerbate the current situation, reducing revenue to the ILECs and providing even more compensation to Global and other companies offering VNXX numbers, but without addressing any of the other concerns raised by VNXX.[84] We, therefore, reject this alternative.

We affirm the Hearing Officer's decision that Global should not be permitted to designate what would otherwise be a toll call in Vermont to be a local call by using virtual NXX.

Issue 5: Change-of-Law Provisions

Verizon supports the Hearing Officer's recommendations on the general change-of-law provisions of the interconnection agreement, but contests the condition that Global may explicitly refer to revisions or reversal of the ***ISP Remand Order,*** stating that such references are redundant and could cause future disputes. We are not persuaded by Verizon that provisions specific to the ***ISP Remand Order*** could increase the likelihood of future disputes involving contract interpretation. On the contrary, such specificity would likely serve to reduce the likelihood of disputed interpretation. Moreover, we do not interpret the Hearing Officer's proposal to allow specific reference to the *ISP* ***Remand Order*** as imparting any special status to that order.

We affirm the Hearing Officer's decision, and direct the parties to craft change-of-law provisions similar to that proposed by Verizon, but allowing for specific reference to the *ISP* ***Remand Order*** as Global requests.

Issue 6: Two-way Trunking

The Hearing Officer's proposed decision on two-way trunking is not contested by any party. We affirm.

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83. **As the calls are local at the retail level, no IXC is involved, so the originating LEC would receive no originating access.**

84. The Department's proposal also fails to address the impact upon LECs that are not parties to the Interconnection Agreement, such as the Independent Telephone Companies.

Issue 7: Incorporation by Reference

While both parties generally accept the proposed decision on Issue 7, Verizon contests the recommended notice provisions, stating that it would be burdensome and unnecessary for them to have to notify Global NAPs each time a tariff change is proposed. Verizon further argues that such a notification process would give Global a preferred status over other carriers, which are currently responsible for keeping themselves informed of any and all Board proceedings that may affect them.

We find that the Hearing Officer's proposed notice requirements are not measurably more burdensome than the process Verizon currently employs, particularly at a time when once an electronic mail notification list is developed, it becomes virtually automatic. Moreover, and contrary to Verizon's protestations, such a system does not require any additional analysis be performed by Verizon. Global retains the responsibility to determine which proposed tariff changes may affect them, and to participate in any Board proceedings accordingly.

We affirm that Verizon should be allowed to incorporate by reference its Board- or FCC-approved tariffs in the interconnection agreement, but must give adequate notice of anticipated changes to Global.

Issue 8: Insurance Reauirements

The Hearing Officer recommends that the Board allow Verizon's insurance requirements to prevail and be included in the interconnection agreement. Nothing in the record supports Global's assertion that Verizon's rates are too high; nor did Global explain its current insurance coverage, or quantify the incremental increases caused by Verizon's requirements in Vermont. We note, however, that many of Verizon's requirements protect against liability that could only occur where Global is collocated at Verizon's facilities, or has a physical presence at which it could do harm. Currently, Global has no such liability. Regardless, we conclude that, as the Hearing Officer recommends, Verizon's insurance requirements should be incorporated into the interconnection agreement.

Issue 9: Audit Provisions

The audit provisions recommended by the Hearing Officer were not contested, except that Global explained that its current business operations in Vermont do not require an audit to verify the accuracy of bills, because neither party currently charges, or pays, reciprocal compensation to the other. Therefore, our ruling on this issue would only be relevant to new Global operations (for example, out-bound voice traffic), or apply to CLECs who adopt the terms of this interconnection agreement. Notwithstanding Global's current business operations, we affirm the audit provisions, within the limited scope and including certain protections, as recommended by the Hearing Officer.

Issue IO: Collocation

Global asks that if the Board decides to require Global to provide collocation at its facilities, the Board should clarify that such a requirement only applies where there is space and power available. We hereby give such a clarification, but go further to support the Hearing Officer's reasoning that such collocation should be allowed not just because it is fair, but because of the public benefits achieved by enabling the most cost-effective and efficient network facilities and options.

Issue 11 : Applicable **Law**

The parties did not comment on the Hearing officer's recommendation on this issue. Regardless, we point out that **30 V.S.A.** §§ **12** and **14** unquestionably resolve this issue, consistent with the Hearing Officer's recommended decision. To wit:

> "neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided herein, shall operate as a stay of enforcement **of** an order of the board unless the board or supreme court grants a stay under the provisions of section **14** of this title."[85]

85. **30 V.S.A. § 12**

Issue 12: Access to UNEs

Verizon submitted issue 12 (and issues 10 and 11) as a supplement to the issues presented by Global. Now, in its comments on the Proposal for Decision, Verizon asserts that the Proposal for Decision contains statements on this issue that are unnecessary to the arbitration decision. Specifically, while Verizon agrees with the recommended decision that Verizon should not be constrained in its decisions to maintain and upgrade its network, it then actually seeks to constrain Global (and all CLECs) from access to future, yet to be defined UNEs, by limiting its unbundling obligations to only those UNEs which it has been ordered to provide.

We agree with Verizon that this issue may be beyond the scope of this arbitration. Nevertheless, we have before us disputed language for Section 42 of the General Terms and Conditions of the Interconnection Agreement. Our ruling in Docket 5713 explained criteria by which network elements are required to be unbundled and we will not repeat them here. We point out, however, that we concluded in that docket that, among other things, "the availability of a feature or function in another jurisdiction in which [then] NYNEX (or the independent LEC) operates should establish a rebuttable presumption of demand sufficient to trigger a mandatory unbundling requirement in Vermont."[86] This determination may provide for a broader interpretation of an ILEC's unbundling obligation than Verizon's stated belief that they must unbundle only "ordered" network elements.

We uphold the Hearing Officer's decision that Section 42 of the General Terms and Conditions of the Interconnection Agreement should be crafted to ensure that neither party is constrained in its decisions to upgrade its own network. Moreover, the duty to inform interconnecting carriers of changes that may affect the interoperability of the network, pursuant to Section 251(c)(5) of the Act, must be maintained. Regarding Global's proposed insertion of language in Section 42 which requires Verizon to offer fiber as a network element, we find the record in this arbitration is insufficient to render an opinion. Again, the guidelines in Docket 5713 provide the framework within which Global may request that a particular element be unbundled.

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86. **Docket** 5713, **Order** of 5/29/96, at 23

Additional Issues

Lastly, Verizon raises a concern that it interprets the Proposal for Decision to imply that Global will have the opportunity to bring forth additional issues for resolution. That is not the case. Pursuant to Section 252(b)(4)(C) of the Act, this Order shall serve as this Board's conclusive resolution of any unresolved issues in this matter. The parties shall incorporate our rulings here into their interconnection agreement, which they shall subsequently submit, by February 10,2003, for Board approval.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Recommendations of the Hearing Officer are adopted.

2. Verizon Vermont and Global NAPs shall submit an interconnection agreement for Board approval, incorporating and consistent with the Hearing Officer's recommendations, by February 10,2003.

Dated at Montpelier, Vermont, this 26th day of December ,2002.

s/ Michael H. Dworkin)
)
) PUBLIC
) SERVICE
s/ David C. Coen)
) BOARD
)
s/ John D. Burke) OF VERMONT

OFFICE OF THE CLERK

FILED: December 26,2002

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subjecr to revision of technical errors. Readers are requested to notify rhe Clerk of the Board (by e-moil, telephone, or in writing) of m y apparent errors. in order thar any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision Io the Supreme Courr of Vermonr must be filed with ihe Clerk of rhe Board within thirty days. Appeal will not stay the effect of this Order, absenr further Order by this Board or appropriare acrion by the Supreme Court of Vermonr. Motions for reconsideration or stay, if any, must befiled with rhe Clerk of the Board within ten days of the date of this decision and order.